

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/18/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000531

FILED: _____

JOSE J CONTRERAS

JAMES T BLOMO

v.

STATE OF ARIZONA

DIANA C HINZ

DISPOSITION CLERK-CCC
PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8962701

Charge: ASSAULT

DOB: 10/19/69

DOC: 05/30/01

This Court has jurisdiction of this appeal by the State pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement without oral argument since its assignment on November 28, 2001. This decision is

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made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

The only issue raised by Appellant is whether the trial court erred in its sentencing of Appellee. Appellee was charged and found guilty of the crime of Assault, a class 3 misdemeanor offense in violation of A.R.S. Section 13-1203(A)(3). The State alleged that this was a Domestic Violence offense and complains on appeal that the trial judge failed to order that Appellant complete a Domestic Violence Offender Treatment Program. Appellee explains that since he had already served 30 days in jail and was given credit for 30 days time served at the time of his sentencing, the trial court concluded there was no jail time available to ensure compliance by Appellee with a counseling program.

A.R.S. Section 13-3601.01(A) provides:

The judge shall order a person who is Convicted of a misdemeanor Domestic Violence offense to complete a Domestic Violence Offender Treatment Program that is provided by a facility approved by the Department of Health Services or a Probation Department. The Department Of Health Services shall adopt and enforce guidelines that establish standards for Domestic Violence Offender Treatment Program approval.

Though the trial court correctly concluded no jail time would be available to force Appellant to complete a Domestic Violence Treatment Program, it erred in failing to order the counseling required by A.R.S. Section 13-3601.01(A). The counseling program required by that statute is mandatory, not discretionary.

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IT IS THEREFORE ORDERED reversing the sentence imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for sentencing to include counseling and a Domestic Violence Offender Treatment Program as required by A.R.S. Section 13-3601.01(A), and all further and future proceedings.